





Missouri Trustee Council

Southeast Missouri Lead Mining District: Natural Resource Restoration Projects concerning Property Acquisitions, Non-native species control and West Fork Black River restoration

The State of Missouri, the U.S. Department of the Interior, and the U.S. Department of Agriculture, acting on behalf of the public as trustees for natural resources and their associated services, are funding several compensatory restoration projects in the Southeast Missouri Lead Mining District. These restoration projects relate to the natural resource damage assessment and restoration process undertaken by the State of Missouri, the U.S. Department of the Interior, and the U.S. Department of Agriculture (collectively "Trustees") in the Southeast Missouri Lead Mining District pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601-9675) and implementing regulations (43 C.F.R. Part 11).

In accordance with the Southeast Missouri Ozarks Regional Restoration Plan (SEMORRP), the Trustees are funding several projects, including (1) the acquisition and restoration of habitat; (2) the treatment of non-native species and planting of native plants on the Mark Twain National Forest; and (3) restoration of springs, riparian area, and wetlands to restore the natural flow, wetlands, and hydrology of the West Fork Black River bottomland areas. These restoration projects will serve to replace lost natural resources and the services the resources provide as a result of the releases of hazardous substances at mine and mill facilities formerly owned and/or operated by ASARCO, LLC and Freeport McMoRan.

More information on the natural resource damage assessment and restoration process, the SEMORRP, the amount of recovered funds to be used for natural resource restoration, and the restoration projects, including the restoration proposals, is available on the following websites:

http://dnr.mo.gov/env/hwp/sfund/nrda-se.htm

OI

http://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html

Public Participation

The Trustees presented the projects to the public and accepted comments between September 2, 2015 and October 15, 2015. Please see Appendix B titled "Southeast Missouri Lead Mining District: Response to Comments on Proposed Natural Resource Restoration Projects concerning Property Acquisitions, Non-native species control and West Fork Black River restoration (Dec. 2015)" for a summary of the comments received as well as the Trustees' responses.

Natural Resource Restoration in the Southeast Missouri Lead Mining District: Property Acquisitions and Supplemental Environmental Assessment Dec. 2015









I. Introduction

The State of Missouri, the U.S. Department of the Interior, and the U.S. Department of Agriculture, acting on behalf of the public as trustees for natural resources and their associated services, are funding several compensatory restoration projects in the Southeast Missouri Lead Mining District. These restoration projects relate to the natural resource damage assessment and restoration process undertaken by the State of Missouri, the U.S. Department of the Interior, and the U.S. Department of Agriculture (collectively "Trustees") in the Southeast Missouri Lead Mining District pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601-9675) and implementing regulations (43 C.F.R. Part 11). The natural resource Trustees recovered monetary damages from the American Smelting and Refining Company (ASARCO, LLC), Cyprus Amax Minerals Company, Missouri Lead Smelting Company (for purposes of this proposal, Cyprus Amax and Missouri Lead will collectively be referred to as Freeport McMoRan), to settle certain legal claims concerning injuries to natural resources and their services. In accordance with the Southeast Missouri Ozarks Regional Restoration Plan (SEMORRP), the Trustees are funding the acquisition and restoration of habitat to replace lost natural resources and the services the resources provide.

For purposes of the ASARCO restoration funds, the Missouri Trustee Council is comprised of the State of Missouri, represented by the Missouri Department of Natural Resources and the U.S. Department of the Interior represented by the U.S. Fish and Wildlife Service. For purposes of the Freeport McMoRan restoration funds, the Missouri Trustee Council is comprised of the State of Missouri, represented by the Missouri Department of Natural Resources, the U.S. Department of the Interior, represented by the U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture, represented by the U.S. Forest Service. The SEMORRP provides a process framework that governs the approach for restoration project identification, evaluation, selection and implementation. This document summarizes the projects to be funded and describes the potential benefits on the quality of the physical environment and biological resources. More detailed information relating to each restoration project discussed is available on the following websites:

 $\underline{http://dnr.mo.gov/env/hwp/sfund/nrda-se.htm}$

or

http://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html

¹ The U.S. Department of Agriculture was not a party to the ASARCO claim and settlement.

II. Restoration Activities

The Trustees will acquire and restore parcels of land within the described boundary of the SEMORRP (See SEMORRP Section 1.2 and Figures 1 and 2, link provided below) to compensate the public for the loss of natural resources and the services they provide resulting from the releases of hazardous substances from mining activities. The acquired and restored properties will be owned in perpetuity by the State of Missouri or the U.S. Forest Service, as described below, and will be open to the public for site-appropriate recreational activities that reflect their wild and scenic nature. These agencies possess the expertise to restore and manage land resources. Natural resource restoration activities on the properties proposed include the reintroduction of prescribed fire to the landscape, the control and removal of invasive species, selective thinning of trees to improve migratory bird and other wildlife habitat, and streambank and floodplain forest restoration, among others.

The Trustees have currently allocated up to \$18,600,000 for property acquisitions and restoration which meet defined ecological characteristics tailored to address injuries to natural resources and their services as a result of the releases of lead and zinc in the Southeast Missouri Lead Mining District. Acquisition and restoration of properties could begin in early 2016. In order to protect the private landowners who are willing to sell their property, and the sensitive nature of real estate transactions, specific parcel information will be provided only after the parcel is under contract.

A. Properties within the Eleven Point River Watershed

Depending on a variety of factors, a portion of the amount identified above will be used for the acquisition and restoration of properties within the Eleven Point watershed to be owned and managed by the State of Missouri through the Missouri Department of Natural Resources (MDNR). Candidate properties the Trustees will consider include large tracts with intact river hill forests and riparian corridors. Removal of grazing and other agricultural practices present on many of these lands will enhance ecosystem functioning and enable reforestation and/or reestablishment of grasslands, as appropriate.

Additionally, public ownership and management of these lands will add protections for aquatic ecosystems, both in the Eleven Point River itself and in the many springs and perennial and intermittent streams contributing to its flow. The aquatic resources in this area are similar to those injured by the releases of lead and zinc from the mining activities for which the Trustees recovered natural resource damages.

The Eleven Point watershed provides habitat to numerous migratory birds and has been identified as an Audubon Important Bird Area. Through these acquisitions and the

implementation of management practices, this habitat will be preserved and, where necessary, restored such that the benefits to migratory birds will accrue in perpetuity.

B. Properties within the St. Francis River and Black River Watersheds

Additional properties that will be acquired and restored are located within the watersheds of the St. Francis River and Black River. The lands to be purchased are ecologically similar to those that were impacted by the releases of hazardous substances and therefore will provide value to similar species and natural communities. In addition, the acquisitions will connect to other, high quality habitat, and are adjacent to other public lands, which provide enhanced environmental benefit by removing "edge effects" by having a larger ecosystem.

The properties are located in the St. Francois Knobs area which has been designated as an Audubon Important Bird Area. Dry-mesic igneous forest and glades cover the majority of the properties providing extensions of adjacent areas with similar characteristics. Each of the properties is directly contiguous to, and in some cases surrounded by, existing public land with high quality examples of these same habitat types and represents strategic gains to enhance ecological connectivity and the addition to substantial acreage of uninterrupted habitat. Public ownership secures perpetual benefits for migratory birds.

In addition, the protection and restoration of the glade complexes will provide habitat for species characteristic of these systems and will also enhance the resiliency of the systems. Some of this land provides the opportunity for restoration of shortleaf pine (*Pinus echinata*), a species whose distribution has been adversely impacted by human activities in the area. Each has high quality streams with relatively intact riparian corridors. Thus, protection of these lands will also support protection of streams on and downstream from these properties. Each would support backcountry recreation while fully supporting the natural communities consistent with the goals of NRDAR to restore lost natural resources and their associated services.

C. Ownership and Management of Acquired Lands

The primary goal of these restoration activities is the acquisition and restoration in perpetuity of natural resources, which will be placed into public ownership as compensation for the natural resource injuries resulting from the releases of hazardous substances. The expected recipients of the purchased properties include the MDNR and the Mark Twain National Forest (MTNF). The proposed tracts provide a unique opportunity for significant ecological improvement as they represent connectivity to existing protected lands and the additional protection of thousands of acres of contiguous and varied habitat that would be restored and open to the public for recreational opportunities compatible with their wild and scenic nature.

Proposed future restoration activities will serve to enhance the suitability of the acquired tracts for a broad suite of wildlife. Removal and restriction of grazing will allow grasslands and forests

to recover, providing enhanced nesting opportunities and increased food sources for migratory birds. Re-introduction of fire onto the landscape will stimulate the growth of native forbs and grasses and reduce the density of overstocked forests. Restored riparian corridor and floodplain forests will provide exceptional nesting and foraging areas for migratory birds and other wildlife. Restoration and regeneration of open woodlands and savanna communities will recreate habitats that are rare and decreasing on the landscape of southeast Missouri currently and assist in the recovery of natural resources injured by the releases of hazardous substances from mining activities.

D. Restoration and Rehabilitation Activities on Acquired Properties

As mentioned above, the primary goal of this project is the acquisition and restoration of natural resources. The general restoration goals for the acquired properties will be to preserve and restore native savanna, woodlands and forest, streams and riparian areas, in their proper ecological context. The restoration objective will be open, grassy savanna and oak woodlands across the upland plain, closed oak-pine woodland and forest in the river hills, and bottomland forest in floodplains. Where appropriate, dry igneous woodlands and glades will also be restored. The Trustee agency owning the property will fully document habitat types and conduct species inventories, including the presence of threatened and endangered species and species of conservation concern. The management and long-term stewardship goals and objectives for these properties will include, but will not be limited to:

- Focus on the maintenance of existing high quality habitat.
- Implement management plans and practices similar to those of other lands held by the Trustee agency, including monitoring ecosystems and representative species present on the properties, towards the goal of establishing self-sustaining ecosystem level improvements.
- Introduce the use of prescribed fire to promote the natural diversity of species characteristic of this area and restore it to its historic natural state.
- Restore riparian and aquatic areas.
- Protect plants and animals of conservation concern found on the properties.
- Public ownership will provide for more control of feral hogs and invasive plants species, further enhancing the natural communities not only on these properties, but also on adjacent public lands.
- Road removal and restoration will occur where possible to reduce forest fragmentation.
- Control invasive plants and animals.
- Establish monitoring transects to track restoration efforts on glade and woodland flora; regularly monitor rare and endangered species.

Provide access for public use, through trails and other backcountry recreation compatible
with the goal of restoring habitat for the benefit of natural resources such as birds and
mammals.

E. Long-Term Management

The properties will be managed according to existing management plans and, where necessary, new resource management plans, with the focus on the preservation of existing upland and riparian forest, and expanding its extent. Tree planting in the bottomland fields, cane and tree planting/restoration in the river bottoms and aquatic system, prescribed burning and exotic species control will be important and necessary elements of site restoration and management. This management framework will protect the properties in perpetuity in a manner consistent with and supportive of the goals of NRDAR.

III. Relationship Between This Document and Prior NEPA Analyses

The SEMORRP was developed under the NRDAR regulations implementing the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as the federal "Superfund" law) to describe the process that will be used by the Trustees to identify appropriate actions to restore, rehabilitate, replace, and/or acquire natural resources equivalent to those injured by hazardous substance releases. The SEMORRP fulfills requirements under the National Environmental Policy Act of 1969 by taking a "hard look" at the environmental consequences of proposed federal actions, to disclose pertinent information about the actions to the public and provide public review and comment on federal actions that affect environmental resources. This document (Natural Resource Restoration in the Southeast Missouri Lead Mining District: Property Acquisitions and Supplemental Environmental Assessment (Dec. 2015)) is part of the public review process.

Development of the SEMORRP was a joint effort among state and federal natural resource Trustees and was coordinated with the public. The SEMORRP is jointly administered by the Trustees to assist in carrying out their natural resource authorities under CERCLA, the Oil Pollution Act, and the Clean Water Act. Natural resource damages received, either through negotiated or adjudicated settlements, must be used to restore, rehabilitate, replace and/or acquire the equivalent of those natural resources injured and services lost.

This document can be found at:

http://dnr.mo.gov/env/hwp/sfund/nrda-se.htm

or

http://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html

The restoration projects described in this document are compliant with the preferred alternative selected in the SEMORRP. The preferred alternative (SEMORRP, Section 5, Alternative D) is a combination of primary and compensatory restoration. As identified in the SEMORRP, priority is given to primary restoration, whenever feasible. However, the Trustees will implement compensatory restoration when distinct advantages in cost-effectiveness or unique opportunities in protecting or enhancing important natural resources arise. For example, the tracts of land described in this document offer unique opportunities for the Trustees to provide connectivity to existing protected lands and to also preserve in perpetuity and restore large blocks of contiguous property within a landscape of private and public land holdings. In general, the Trustees prefer to acquire and restore larger blocks of land than smaller tracts, because larger parcels:

- Afford the opportunity to restore imperiled habitats on a landscape scale;
- Reduce the edge effect and its commensurate predation of increasingly rare species who suffer from habitat fragmentation; and
- Are known to be especially important for the reproductive success of migratory songbirds, a group of species known to be adversely impacted by the types of releases that occurred at the facilities owned and operated by ASARCO, LLC and Freeport McMoRan.

At the same time, the Trustees will consider small strategic acquisitions that serve to fill in or expand an existing natural area or contribute to an existing or possible ecological corridor.

A. Site, Claim, and Settlement Information

The Southeast Missouri Lead Mining District (SEMOLMD) remains one of the largest lead producing regions of the world. The mining district covers multiple counties located from 40 to 90 miles south-southwest of the City of St. Louis. As a result of the contamination and injury of natural resources in SEMOLMD from mining wastes, the federal and state natural resource Trustees initiated ongoing Natural Resource Damage Assessment and Restoration activities at numerous sites within SEMOLMD. Natural Resource Damage Assessments have shown heavy metal contamination injuring thousands of acres of land, dozens of miles of streams, and terrestrial and aquatic life that depend on these habitats. For more information on the assessment and the different studies performed by the Trustees please see our websites at:

http://dnr.mo.gov/env/hwp/sfund/nrda-se.htm or

http://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html

ASARCO, LLC, and/or its predecessors owned and operated mining leases, mills and smelters in the SEMOLMD; Freeport McMoRan and/or its predecessors owned and operated the Buick Mine and Mill and the Buick Smelter in the Viburnum Trend of the SEMOLMD. Based on the

operations of these companies, the Trustees settled separate claims for injuries to natural resources and their services caused by the mining and related activities of these companies.

One of the Trustees' priorities with these restoration projects is to compensate the public for injury to migratory birds and their supporting habitats. Additionally, the Trustees are seeking to restore and protect in perpetuity natural aquatic communities contained within or neighboring the proposed restoration and acquisition parcels.

IV. Affected Environment

Please see Section 4 and Appendix D of the SEMORRP for further descriptions of the potentially affected resources in the Black, St. Francis, and Eleven Point River watersheds. The conclusions reached in the SEMORRP are incorporated here by reference.

A. Environmental Consequences

Please see Section 5 of the SEMORRP for further descriptions of the potential environmental consequences of implementing these property acquisition and restoration projects in accordance with the Preferred Alternative (D).

B. Potential Impacts to Threatened and Endangered Species

Protective measures would be taken during implementation of restoration projects to prevent any impact to sensitive species. Adherence to the restrictions proscribed in the protective measures will provide for no adverse effects on the listed species. For federally-listed species, consultation under the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531-1599, and its implementing regulations, 50 C.F.R. Part 402 will occur prior to the release of any restoration funds. None of the projects that are being funded will have an adverse effect on listed or candidate species or their critical habitats.

C. Potential Impacts to Cultural and Historical Resources

Restoration projects such as acquiring tracts of native forest, the reintroduction of prescribed fire, and control of invasive species on acquired lands have the potential to affect properties meeting the criteria for the National Register of Historic Places and other cultural resources. Prior to making the final decisions about these restoration projects, the Field Supervisor at the Columbia, Missouri Ecological Field Office of the Fish and Wildlife Service, consulted with their Regional Historic Preservation Officer (RHPO) and will complete the Section 106 process. 36 C.F.R. Part 800.

D. Climate Change

Implementation of the acquisition and restoration projects described in this proposal is expected to enhance the resiliency and adaptive ability of new and existing state park and Forest Service lands by providing expanded topographical relief and consequent habitat flexibility in the Black and St. Francis River watersheds. MDNR and Forest Service staff also will have enhanced access to previously owned land through these acquisitions, which will grant them additional management options to adapt to climate change. The large size of the properties proposed for acquisition and restoration in the Eleven Point River watershed confers the ability to manage landscapes on a landscape scale. Consequently, management activities can be adapted to meet the potential challenges posed by climate change on a broader scale.

E. Socioeconomic Considerations

Protection of forests, wetland, floodplain, and riparian corridors will provide wildlife viewing, fishing and hunting, and help create positive economic impacts on the local economy. Aquatic habitat improvements or enhancements would provide more opportunities for public enjoyment of natural resources. Acquisition procedures of land or purchase of conservation easements involves transactions with willing land owners who would be paid fair market value. Potential negative impacts of land acquisition include removal of land from county property tax rolls, reductions in the number and frequency of private timber sales on acquired lands, and increased presence of tourists and commensurate traffic to acquired lands.

F. Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," provides that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." The projects that will be funded consist of acquisition and management of habitat as public land, including allowing public use. As part of these projects, the Trustee agency owning the property will take actions to further rehabilitate the habitat to obtain higher ecological services as well as to provide opportunities for human recreation consistent with the wild and scenic nature of the area. The locations of the proposed acquisitions are within the geographic boundary identified in the SEMORRP, for which a separate public review and comment period was completed in 2013 and 2014, in compliance with the Comprehensive Environmental Response, Compensation, and Liability Act Section 111(i) and the National Environmental Policy Act. Executive Order 12898 does not create a new legal remedy, and the Trustees discussed Environmental Justice as part of the National Environmental Policy Act analysis within the Restoration Plan/Environmental

Assessment. However, for thoroughness, this topic is further addressed here as a response to comment.

A review of census data from http://quickfacts.census.gov/qfd/states/ for Oregon and St. Francois Counties reveals that the median income of St. Francois County is \$37,238 (2009-2013). For Oregon County, the median income is \$27,743 (2009-2013). The percentage of persons living below the poverty level in St. Francois County is 19.4% (2009-2013) whereas in Oregon County it is 27.7%, (2009-2013). Finally, the percentage of persons identifying as white only in both counties was essentially the same in St. Francois County (94%) as in Oregon County (95%). No Indian Tribes, as that term is defined in NEPA, are present in the project areas.

The environmental effects of these restoration projects are to preserve and improve property containing ecological features that support a wide array of natural resources including migratory birds and to provide greater opportunities for members of the public to enjoy natural resources. Acquired properties will be open to all people regardless of race, color, national origin, or income, thus all people—including those in the affected communities — will be able to enjoy the natural resources at the proposed acquisitions. The acquisitions will benefit a myriad of natural resources, such as migratory birds. Migratory birds and other resources move around. As a result, providing habitat in Oregon County could increase the health and robustness of migratory birds and other resources, which may have a cascading beneficial effect in other counties, including those where the injuries have occurred.

The proposed action itself—creation of public lands—would not directly harm human health and could actually improve human health by providing the public greater opportunity to spend time in nature. Studies have shown that time in the outdoors has a restorative effect on the human brain along with other potential health benefits. (See e.g., "The Cognitive Benefits of Interacting with Nature "by Marc Berman, John Jonides and Stephen Kaplan, Psychological Science 2008; "5 Reasons to Spend more time outdoors -even when it's cold" TIME Magazine, 5 January 2015, articles posted at http://www.childrenandnature.org/research/). The Trustees acknowledge that the communities where the natural resource injuries occurred are located away from the proposed acquisitions, perhaps by as much as two and an half hours by car (2.5 hours) or as little as 90 minutes. While only a car trip away, this distance would provide more convenient visitation opportunities for residents of Oregon County as compared to St. François County. Further, the Trustees acknowledge that the funding of restoration projects in Oregon County necessarily means that there are fewer funds available for restoration projects in the communities where the natural resource injuries occurred. A temporary, indirect result of this may include increased exposure by humans and natural resources to lead in soils and sediments for a longer period of time by residents and resources in St. Francois, Madison, Iron, Reynolds, and Jefferson counties. However, the U.S. Environmental Protection Agency (EPA) is actively cleaning up contamination in Iron, Reynolds, Madison, Washington, St. Francois, and Jefferson Counties.

The mission of the EPA cleanup program is to protect human health and the environment. Thus, the Trustees believe that the EPA clean-up program will address the risks posed to human health in these communities, while the Trustees restore injured natural resources and their services consistent with the Comprehensive Environmental Response, Liability, and Compensation Act.

The proposed restoration projects will not deplete all of the ASARCO damages, and the Trustee Council intends to continue proposing, funding and implementing restoration projects using the ASARCO damages. Information on the SEMO ASARCO funds is also available at: https://doinrdar.ibc.doi.gov/ (Accounts 0587-0591).

Based on the above discussion and analysis, the proposed restoration projects will not cause disproportionately high and adverse effects on any minority or low-income populations in accordance with the provisions of E.O. 12898. No further Environmental Justice analysis is required.

G. Cumulative Effects

The cumulative effects of implementing the acquisition and restoration projects are expected to be an increased abundance of migratory songbirds and a greater diversity of aquatic and terrestrial biotic communities. These are the same natural resources injured by the releases of hazardous substances by the above mentioned companies. Following the implementation of the above described restoration projects, ecosystem services such as the provision of clean surface water for use by human and natural users will be increased. Local and regional communities will have more opportunities for increased natural resource use and enjoyment.

The acquisitions to be owned and managed by MDNR "will be open to the public for site-appropriate recreational activities that reflect their wild and scenic nature." Further, MDNR has confirmed that it will adhere to the easement and restore and further protect the property in its development of any new park along the Eleven Point River in southeast Missouri. [See Letter from W. Nightingale, Forest Supervisor, Mark Twain National Forest to S. Parker Pauley, Missouri Department of Natural Resources, July 29, 2015, attached as Appendix A]. As a result of these assurances to preserve the wild nature of the Eleven Point National Scenic River, secondary or indirect, adverse impacts to the environment from the proposed restoration projects of acquiring properties and maintaining them as a park, may not be "reasonably" foreseeable. However, included below is further discussion of secondary or indirect, adverse impacts which may result from the proposed acquisition and potential development of a new state park along the Eleven Point River.

Creation of pathways by park users throughout the easement lands

There exists a possibility that future visitors to a newly created state park will create their own "social" or unauthorized trails separate from those already in existence in the easement lands.

Creation of unauthorized trails by park users could damage existing or restored vegetation in the federal easement lands and may result in a small amount of erosion or unsightly trail conditions. However, the Trustees anticipate MDNR will address such social trails by appropriate signage discouraging establishing such routes and/or decommissioning trails that are established. Additionally, given that the easement currently allows agricultural uses within the easement area, an indirect effect of the purchase of lands for a state park may be that the cumulative amount of unauthorized trails and surface erosion of soils will decrease rather than increase. Further, implementation of state of the art native community restoration programs by MDNR outside, and potentially inside of the federal easement area, and a cessation in grazing and logging activities on newly acquired park lands could indirectly reduce erosion and sediment loading to the Eleven Point River and the federal easement land.

Possible establishment of designated trails into and through the easement lands

Construction of designated trails into and through the easement lands is not part of the proposed restoration projects put forward by the Trustees. MDNR has indicated its intention to primarily locate any designated trails where there currently exist roads and paths associated with the current property use, provided such uses are consistent with the existing conservation easement. As described above, removal of cattle from the easement lands will likely indirectly decrease the amount of trails and erosion throughout the federal easement.

Changes in the type and intensity of use within the scenic easement lands

The construction of permanent or temporary structures within the federal easement lands is not part of the proposed restoration projects put forward by the Trustees. MDNR has indicated that it will follow the restrictions of the scenic easement. Those restrictions include, among other things, a prohibition on the construction of buildings within the easement area. Further, a foreseeable indirect impact of the acquisition and protection of the Eleven Point River property resulting from the removal of cattle from the river banks, floodplains, creek beds, meadows, and forests of the federal easement lands will likely result in an improvement in the diversity, abundance, and resilience of the natural communities which reside there.

Loss of the primitive river experience floaters have enjoyed for decades along the Lower Eleven Point River;

A reasonably foreseeable indirect impact of the acquisition of lands for a new state park along the Eleven Point River could be an increase in visitors to the Eleven Point River area which may disrupt the ability of floaters to experience a "primitive river experience". However, several factors mitigate the potential loss of the "primitive river experience" for a floater including the above described prohibitions on the construction of any new structures, including boat ramps, or roads as well as the removal of cattle from the federal easement lands. Careful observation of

the federal easement lands in their current state reveals degradation of vegetative communities and soils caused by cattle along the banks, floodplains, and gravel bars of the river, which may detract from a "primitive river experience" for floaters. Consequently, a reasonably foreseeable indirect impact of the acquisition of the Eleven Point River lands for a new state park could be a more primitive river experience rather than less.

Development of motorized access as well as other park development brought about by pressure from local government and local commercial interests

An indirect impact of the acquisition of lands for a new state park may be that local or state pressure is brought to bear to create new motorized access to the Eleven Point River federal easement lands. However, the Mark Twain National Forest has remained steadfast in their opposition to the construction of new motorized accesses in the form of roads, structures, or new canoe landings on any newly acquired Eleven Point River federal easement lands. Any alterations to the federal easement lands such as those described above would trigger a revision of the Mark Twain National Forest Plan and as such, would be subject to public review and comment under NEPA and the National Forest Management Act (NFMA) at that juncture.

V. Public Participation

A. Public Meetings, Review and Comment Period

The Trustees held a public meeting on September 2, 2015 to inform the public of the proposed projects. The Trustees also participated in a public meeting organized by State Representative Linda Black at the Mineral Area College on October 13, 2015. The September 2nd meeting began a 30-day public comment period, which the Trustees extended an additional 10 days in response to public requests for an extension. The public comment period closed on October 15, 2015. The Trustees' responses to the comments received are attached as Appendix B to this document.

Missouri Trustee Council—Appendix A



Forest Service Mark Twain National Forest Supervisor's Office 401 Fairgrounds Road Rolla, MO 65401 573-364-4621 FAX: 573 364-6844

File Code:

2300; 5400

Date:

July 29, 2015

Ms. Sara Parker Pauley Director Missouri Department of Natural Resources P.O. Box 176 Jefferson City, MO 65102

Dear Director Pauley:

Thank you for traveling to Rolla last week to meet with us. It was very interesting to hear about the State park system and what the Missouri Department of Natural Resources (MoDNR) hopes to accomplish by developing a new park along the Eleven Point River in southeast Missouri.

Mark Twain National Forest supports MoDNR's efforts to create a new park. The MoDNR's confirmation that it will "obey and strengthen current [conservation] easement provisions" was especially helpful in allowing us to provide support for such an endeavor. We will work cooperatively with the MoDNR to resolve any issues that may arise in the acquisition, development or management of this park.

This letter should not be deemed to interpret or alter any legal authorities applicable to the United States, the U.S. Department of Agriculture, the Forest Service, or Mark Twain National Forest; including, but not limited to, the conservation easement held by the United States along the Eleven Point River, the Wild and Scenic Rivers Act, and the Mark Twain Forest Plan. No legal rights are created by this letter in any of these federal entities; the State of Missouri (or any department or instrumentality of it); or any third party.

We look forward to working with MoDNR on this endeavor. Please feel free to contact me if you have any questions.

Sincerely,

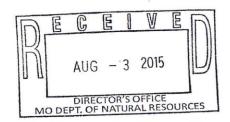
WILLIAM B. NIGHTINGALE

Forest Supervisor

cc:

Amanda Walker Rich Hall

Tim Bond





Missouri Trustee Council—Appendix B

Southeast Missouri Lead Mining District: Response to Comments on Proposed Natural Resource Restoration Projects concerning Property Acquisitions, Non-native species control and West Fork Black River restoration (Dec. 2015)

This appendix presents comments that were received on the restoration projects proposed to the Missouri Trustee Council (Trustees or Trustee Council) and the associated Supplemental Environmental Assessment. The Trustees' responses to comments received are provided below. A Trustee –either the Missouri Department of Natural Resources or the U.S. Forest Service—submitted these proposals for consideration and ranking to the Trustee Council pursuant to the Southeast Missouri Ozarks Regional Restoration Plan (SEMORRP or "Plan"). Once reviewed by the Trustee Council, identified proposed projects were made available for public review and comment pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the National Environmental Policy Act (NEPA). The final documents describing the projects selected and approved by the Trustee Council are available on the Trustees' websites:

http://dnr.mo.gov/env/hwp/sfund/nrda.htm

or

http://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html

A. Summary of Selected Restoration Projects

Table 1 summarizes the funding amount and sources for the following projects.

a. Native Plant Diversity Restoration: Non-Native Invasive Species treatments and native replanting on Mark Twain National Forest

The U.S. Forest Service (Forest Service) will use restoration funds to map, control, and eradicate non-native invasive species (NNIS) within the Mark Twain National Forest in portions of the Meramec, Upper Black and Big River watersheds in Iron and Reynolds Counties. This project will consist of NNIS treatment on 4,693 acres known to have invasive species present. Additionally, the Forest Service will conduct NNIS mapping on 8,932 acres and treat those acres where invasive plant species are identified. Invasive species control is important for protecting the floristic quality and composition of the Mark Twain National Forest. Following treatment, the areas will be replanted with a native seed mix to promote the growth and colonization of native plant communities, if necessary. The project lands possess the same, or similar, ecosystems that were injured as a result of the releases of hazardous substances.

b. West Fork Bottomland Restoration

The Forest Service will use restoration funds to restore the natural hydrology of a section of the West Fork of the Black River located in Iron County. This project will consist of recontouring and revegetating the bottomland area to restore the natural flow of springs and encourage reestablishment of natural wetlands, wetmeadows and bottomland hardwoods. The Forest Service will monitor and treat invasive species on the disturbed area. The area targeted for restoration is located less than one mile from the West Fork Mine and Mill, a facility formerly operated by ASARCO. Reestablishing these types of habitats will produce a corresponding benefit to the aquatic environment by reducing the amount of erosion entering the West Fork of the Black River. Additionally, this project will replace migratory bird habitat that was injured as a result of the releases of lead and zinc.

c. Property Acquisitions

The Missouri Department of Natural Resources (MDNR) and the Forest Service will acquire, manage, and restore property located within the boundary of the SEMORRP to compensate the public for the loss of natural resources and their supporting ecosystems resulting from the releases of lead and zinc from mining activities. MDNR proposes the acquisition of properties for inclusion in existing state parks or for the creation of a new state park. In the Eleven Point River watershed, these properties would be managed consistent with the wild and scenic nature of the existing property and in compliance with existing land restrictions, such as a conservation easement. The properties to be acquired by the Forest Service would become part of the existing Mark Twain National Forest, managed pursuant to its Forest Plan. As detailed below, the properties to be acquired possess resources and supporting habitat for those resources that are substantially similar to those that were injured.

1. Properties within the Eleven Point River Watershed

The Eleven Point River watershed provides habitat to numerous migratory birds and has been identified as an Audubon Important Bird Area. Additionally, public ownership and management of these lands will add protections for aquatic ecosystems similar to those injured as a result of the releases of lead and zinc.

2. **Properties within the St. Francis River and Black River Watersheds** Additional properties that will be acquired and restored are located within the watersheds of the St. Francis River and Black River. These properties are contiguous to publicly-owned lands and possess dry-mesic igneous forest, glades and, on one property, an emerging stand of shortleaf pine (*Pinus echinata*). All of the properties are located in an Audubon Important Bird Area. With the surrounding public lands, these properties

contribute to a wilderness corridor exceeding 15,000 acres. Such landscape-scale wilderness provides migratory bird habitat substantially similar to the habitat injured as a result of releases of lead and zinc.

For additional information about these projects, please see "Natural Resource Restoration in the Southeast Missouri Lead Mining District: Property Acquisitions and Supplemental Environmental Assessment" (Dec. 2015); Response to Comment 1, below; and the specific project proposals, available on the Trustees' websites:

http://dnr.mo.gov/env/hwp/sfund/nrda.htm

or

http://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html

One of the State acquisitions is the Frederick Creek Ranch property in Oregon County. At the time of the initial proposal, the Trustees anticipated that \$2.4 million would be funded from ASARCO settlement funds, and an additional \$1.2 million from a different source to complete the acquisition. At this time, the other source of funding is not available, therefore the Trustees will use \$3.6 million from the ASARCO settlement funds, which includes the restoration and implementation costs, for the entire acquisition. The final project proposal has been updated to reflect this change in funding.

All property acquisitions are located within the geographic boundary of the SEMORRP.

Table 1 Project Costs

Project	Amount
a. Native Plant Diversity	\$ 812,610
b. West Fork Bottomland	\$ 59,100
c. Property Acquisitions	
MDNR—Eleven Point Watershed	\$ 8,431,869
Forest Service—St. Francis and Black River	\$ 863,960
Watersheds	
MDNR—St. Francis and Black River Watersheds	\$ 814,238
TOTAL	\$ 10,981,777

B. Trustees' Response to Comments Received on the Proposed Projects

This appendix summarizes comments that were received on the natural resource restoration projects discussed above and provides responses to the comments on behalf of both the federal and state Trustees. The Trustees appreciate the time and effort expended by the commenters on the proposed projects.

In general, comments about the three Forest Service projects and land acquisitions in Iron and Reynolds counties were supportive. There were some comments about compliance with NEPA and Environmental Justice. Most of the comments received pertained to the acquisition of properties by the State of Missouri, especially those in Oregon County, to be purchased with funds from the ASARCO settlement. The Forest Service was not a party to the ASARCO settlement.

Comment 1: Commenters focused on certain language relevant to natural resource damages that is found in the ASARCO Settlement Agreement. That language states that recovered natural resource damages should be used "for restoration activities at or in connection with each Site as directed by the Missouri Trustee Council." The comments suggested that all natural resource restoration projects implemented using damages recovered from ASARCO must take place at or very near the location of the identified injury. Similarly, other commenters recommended that the expenditure of recovered restoration funds should occur only on contaminated areas, not on non-contaminated areas.

Response: In 2009, the natural resource trustees—Missouri Department of Natural Resources and the Department of the Interior—reached a settlement agreement in the ASARCO, LLC bankruptcy case for natural resource damages resulting from releases at several sites throughout the Southeast Missouri Lead Mining District (SEMOLMD). The SEMOLMD ASARCO settlement provided the trustees with \$35 million plus interest to compensate for injuries to natural resources, as a result of the releases of lead, zinc, and other hazardous substances.² The natural resources included in the ASARCO claim included migratory birds, and surface water, as well as supporting ecosystems, such as terrestrial habitat for migratory birds. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides the authority for natural resource trustees to recover natural resource damages from liable parties. CERCLA gives the Trustees the discretion and responsibility to ensure that recovered funds are used to restore, rehabilitate, replace, or acquire natural resources equivalent to those that have been lost or injured.

The ASARCO bankruptcy also required payment of \$37.5 million to the U.S. Environmental Protection Agency (EPA) for cleanup activities at contaminated sites throughout the SEMOLMD.

_

² The Forest Service was not a party to the ASARCO settlement.

Between 2010 and 2014, the Missouri Trustee Council, including the U.S. Forest Service, and its representatives, participated in more than 20 community and stakeholder meetings in Southeast Missouri. In the fall of 2013, the Trustees published for public review and comment a draft plan for using any damages recovered in Southeast Missouri, including, but not limited to the ASARCO funds. The Trustees, including the Forest Service, have reached settlements with other potentially responsible parties—Magmont Joint Venture and Freeport McMoRan. Information regarding the Southeast Missouri Ozarks Regional Restoration Plan was published in the Federal Register. Comments received during this time were incorporated into the final plan, which was published in June 2014. The SEMORRP is publicly available online at:

http://dnr.mo.gov/env/hwp/sfund/nrda-se.htm

01

http://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html

As part of the public plan, geographic areas were identified to focus projects based on boundaries reflecting well-established eco-regions that contain similar natural resources. The areas in southeast Missouri encompass more than 20 counties, and include the Meramec, Upper St. Francois, Upper Black, Current, and Eleven Point Watersheds.

Under the publicly vetted plan, eligible projects include both those that directly restore the natural resources injured by the releases of hazardous substances; and, those that rehabilitate, restore, acquire or replace natural resources and their services equal to those injured as a result of the releases of hazardous substances. It is important to note that under this plan, restoration projects must be feasible and cannot take the place of remedial clean-up. This is important, because under CERCLA, remedial clean-up is led by the EPA at the Southeast Missouri Sites, and additional settlement funds are allocated specifically for this purpose.

The term "restoration" in the context of natural resource damages encompasses several different types of activities. Under CERCLA, the Trustees are authorized to use the recovered funds for the restoration, rehabilitation, replacement or acquisition of equivalent resources. See 42 USC § 9611(i). As reflected in the SEMORRP, the Trustees selected a restoration approach that includes a variety of restoration project categories—including those that take place at the location of injury as well as those that take place away from the location of injury—as the means to compensate the public for the loss of natural resources and associated services.

Under CERCLA there is no limitation that recovered funds may only be spent for restoration of contaminated areas. In fact, in some instances it is technically infeasible to conduct

restoration at the site of a contaminated area whether because of ongoing remedial action or for other reasons. Instead, restoration and acquisition projects must compensate the public for the loss of natural resources and/or their services resulting from a release of hazardous substances. In other words, the link is the natural resource or its service, not necessarily the location. For example, CERCLA authorizes restoration projects that acquire the equivalent of the natural resources injured, meaning the Trustees are given the discretion and responsibility to identify and acquire resources that serve as substitutes for those that were injured.

Section 11.82 of the CERCLA NRDAR regulations provides a list of factors to consider when selecting a restoration project, one of which is "technical feasibility." Restoration projects are designed to provide additional natural resources and/or their services for an amount of time, which will ensure that the public is compensated for the losses suffered. Uncertainty about the duration of a restoration project may deem it to be technically infeasible. For example, in locations where there are ongoing operations or where response actions are planned but not yet decided, a restoration project may be at risk either though recontamination or destruction. The risk of having a restoration project end prematurely counsels against pursuing restoration on-site in these circumstances. Yet, the Trustees have a responsibility to the public to return injured resources and/or their associated services using recovered funds. Consistent with society's timeframe, the restoration should occur in the more immediate future, not the distant future.

The Trustees utilize ranking provisions for restoration projects that consider geographic nexus to the area of injury. However, in the instance of some of the property acquisitions (properties within the Eleven Point Watershed), other benefits of the projects were determined to outweigh the benefits of geographic proximity.

The Trustees established the restoration boundary of the SEMORRP through the public process undertaken in 2013-2014 to encompass the geographic extent of resources likely to be similar to those lost based on geologic, hydrologic, and ecological information. As a result, there are numerous connections between the injured resources and the properties that may be acquired. For example, there were injuries to a number of species resulting from the releases of hazardous substances, including migratory birds. The Frederick Creek Ranch property sits within an Audubon Important Bird Area and contains a mix of habitats—including grasslands and closed canopy forest—that are well-suited for a variety of migratory bird species. Additionally, the Frederick Creek Ranch property is over 2000 acres in size and sits near other large forested tracts (such as the Irish Wilderness to the north). Ecological studies have consistently shown that large, intact blocks of habitat linked to other blocks through corridors provide the greatest benefit to a diverse set of species—including migratory birds (Blake et al. 1984; Simberloff and Abele, 1982). The Trustees will provide

funding to restore acquired lands to their natural setting with open, grassy savannas and oak woodlands across upland plains, close oak-pine woodlands and forests along river hills, and bottomland forests in floodplains. These acquired lands, once restored, will compensate the public for the natural resource injuries related to the impacted lands.

Conducting restoration away from the location of the injury is consistent with CERCLA, and also consistent with the ASARCO settlement agreement. It is a proper exercise of the Trustees' discretion to use recovered damages in a way that compensates for the lost natural resources and their associated services.

Comment 2: Commenters suggested that the natural resource damages be used to conduct clean-up activities in the counties where ASARCO operated.

Response: The Trustees agree that the cleanup of contaminated areas in Southeast Missouri is important. The U.S. Environmental Protection Agency (EPA) is actively cleaning up lead contamination at many of the sites throughout the SEMOLMD. The same 2009 ASARCO bankruptcy settlement provided EPA with \$37.5 million plus interest for the cleanup of sites where ASARCO operated in the SEMOLMD. Pursuant to CERCLA, Executive Order 12580, and the National Contingency Plan, 40 C.F.R. § 300 et seq., the EPA has the authority to clean up contamination at these National Priority List sites "to protect the public health or welfare or the environment." 42 U.S.C. § 9604 (a)(1); Executive Order 12580, Section 2(g). In contrast, CERCLA authorizes the Trustees to use recovered funds to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. As described earlier, the Trustees have been actively engaged in restoration scoping and planning with public involvement since 2010 and will continue to identify projects and solicit public input on project identification for restoration of resources injured by releases of lead and zinc and other mining-related contaminants.

Conducting remedial cleanups is not the purpose of identifying natural resource injuries and recovering damages. As noted above, recovered natural resource damages may only be used to restore, replace, rehabilitate, or acquire the equivalent of the natural resources that have been injured.

Comment 3: Commenters wrote in support of the acquisitions based on the ecological benefits that come from large, contiguous tracts of land. One such comment noted the unique opportunity for the Trustees to add to blocks of existing public lands and to create new protected land.

Response: The Trustees agree with the comment noting the ecological benefits of the proposed projects. With the protection of larger tracts of land containing natural resources

similar to those that were injured, the Trustees can implement large-scale habitat restoration. Such restoration replaces the natural resources and the services they provide that were lost as a result of the releases of hazardous substances as contemplated by CERCLA.

As noted in the response to **Comment 1**, the proposed property acquisitions contain similar ecosystems to those injured by the releases of hazardous substances, and the acquisitions will replace the lost resources.

Comment 4: A commenter asked whether completion of the proposed projects would deplete all of the natural resource damages recovered from ASARCO.

Response: The proposed restoration projects will not deplete all of the ASARCO damages, and the Trustee Council intends to continue proposing, funding and implementing restoration projects using the ASARCO damages. Information on the SEMO ASARCO funds is also available at: https://doinrdar.ibc.doi.gov/ (Accounts 0587-0591).

Comment 5: Commenters recommended projects for funding using recovered natural resource damages. Each is listed below:

- Projects in and around the Big River such as bank stabilization; purchase of land near the river for boat access points; and fish restocking and/or habitat improvements;
- Projects in and around the Fredericktown City Lake;
- Renovations of the former Federal Mill Building (now Missouri Mines State Historic Site) located in Park Hills, MO;
- The creation and/or maintenance of a public lake in the Viburnum Trend area;
- A project implemented in conjunction with the establishment of the local park planned for construction in St. Francois County (the "Bone-hole"); and
- The construction of a mining museum at an inactive mine and mill facility.

Response: The Trustees appreciate the suggested restoration projects and recognize the unique knowledge local governments and citizens may have about restoration opportunities. The Trustees appreciate all the public participation to date and will continue to seek community participation in restoration planning. The Trustees are actively looking for restoration projects that would not be impacted by future cleanup activities. Additionally, as more is learned about EPA's planned cleanup in areas like the Big River, the Trustees will seek additional potential restoration projects to implement after the cleanup is complete. For any project, the Trustees must follow CERCLA and the process described in the SEMORRP when selecting restoration projects, meaning the projects must restore, rehabilitate, replace or acquire the equivalent natural resources to those that were injured.

Comment 6: A commenter noted that contamination associated with mining activities impacts the ability of local businesses near the Big River to engage in sod farming and sand and gravel mining as well as diminishes the recreational potential for some areas.

Response: As noted throughout this document, the Trustees anticipate that mining contamination will be addressed by EPA. As those actions are identified and proceed, the Trustees will analyze possible restoration projects that directly restore the natural resources injured at the sites. Restoration projects may be implemented in the future that restore natural resource services provided by land that has been impacted by contamination.

Comment 7: Commenters suggested the Trustees did not provide adequate public notice of the proposed projects and as a result the public had limited time to submit comments. Based on concerns about the closing of the comment period without all members of the public having the opportunity to submit comments, several commenters requested the Trustees extend the comment period.

Response: The Trustees announced the proposed projects and the public meeting through a number of outlets. On August 20, 2015, MDNR sent an email to more than 400 individuals and organizations who have subscribed to receive Natural Resource Damage Assessment updates through MDNR's website (Sign-up available at http://dnr.mo.gov/env/hwp/sfund/nrda.htm). This message notified the recipients of the public meeting scheduled for September 2, 2015. Additionally, MDNR posted meeting information on the Statewide Open Meeting Notices page, http://www.mo.gov/meetings, and MDNR's Calendar of Events and Meetings page, http://www.dnr.mo.gov/calendar/search.do. Also, the Trustees issued a press release in advance of the public meeting, http://www.fws.gov/midwest/es/ec/NRDA/SEMONRDA/index.html. Following the meeting on September 2, the Trustees used their respective websites to make documents related to the proposed projects available for public review and comment. Based on comments requesting an extension of the comment period, the Trustees extended the original 30 day comment period an additional ten days. The Trustees intend to continue the process embodied in the SEMORRP for public outreach and involvement throughout the restoration process.

Comment 8: The proposed acquisition of property in Oregon County would potentially violate several sections of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 Federal Register 762 (1994)) in spirit, if not in the letter of the law by removing use of the funds from the people in or near the contaminated area.

Response: The Trustees considered Executive Order 12898 in Section IV of the "DRAFT Natural Resource Restoration in the Southeast Missouri Lead Mining District: Proposal for

Property Acquisitions and Supplemental Environmental Assessment" and do not believe that the proposed acquisition of property in Oregon County would result in disproportionately high and adverse human health or environmental impact on minority populations, low-income populations or Indian tribes. While the Trustees' environmental justice analysis correctly evaluates the potential for adverse effects where the proposed action would occur (Oregon County), the Trustees appreciate the commenter's interest in environmental justice issues related to restoration projects in Oregon County. Accordingly, the Trustees have included discussion in Section IV that considers whether the proposed action would result in disproportionately high and adverse effects to minority populations, low-income populations, or Indian tribes in St. Francois County.

Comment 9: The Trustees received over 500 letters of support of a similar nature for the proposed restoration projects. The commenters also noted that any property acquired along the Eleven Point River should be managed in a way that preserves the wild and scenic character of the river.

Response: The Trustees appreciate and agree with the letters of support for the proposed restoration projects. Please see the response to **Comment 10** for information about the intention and ability of MDNR to manage property along the Eleven Point River in a way that preserves and enhances the wild and scenic character of the river.

Comment 10: Commenters supported the proposed acquisition of property along the Eleven Point River. At the same time, these commenters noted the importance of MDNR complying with the existing scenic easement that protects the Eleven Point River corridor. One commenter questioned whether public ownership would adversely impact the land protected by the scenic easement. Specific concerns noted include: the possible impacts on the primitive float experience for users of the Lower Eleven Point River; the scope and extent of trails permitted within the easement area; the possible changes in the type and intensity of land use; the possible development of motorized access.

Response: A 44-mile stretch of the Eleven Point River has been federally designated under the Wild and Scenic Rivers Act based on the scenic qualities it possesses. A portion of this designated section flows through the properties that may be acquired using the ASARCO damages. Near in time to when Congress designated the river under this Act, the United States purchased a scenic easement along the river that is approximately one-quarter mile in width and follows the flow of the river through these properties. The easement prohibits a number of activities, including: the removal of timber, the construction of roads or buildings; and the establishment of boat launches; however, it allows certain agricultural uses that have the potential to contaminate the river. In the process of proposing the project, MDNR met with the Forest Service to review the easement. MDNR will comply with the easement and

associated restrictions. Since MDNR does not engage in agriculture, state acquisition will eliminate the potential for contamination of the river from that use. Regarding the specific concerns noted by the commenter:

- 1) Primitive floating experience: While the acquisition of land for a new state park along the Eleven Point River may increase the number of visitors to the area, several factors mitigate the potential loss of the "primitive river experience" for a floater including the above described prohibitions on the construction of any new structures, including boat ramps, or roads as well as the removal of cattle from the federal easement lands.
- 2) Trails within the federal easement area: Construction of designated trails into and through the easement lands is not part of the proposed restoration projects put forward by the Trustees. MDNR has indicated its intention to primarily locate any designated trails where there currently exist roads and paths associated with the current property use, provided such uses are consistent with the existing conservation easement. As described above, removal of cattle from the easement lands will likely indirectly decrease the amount of trails and erosion throughout the federal easement.
- 3) Changes in type/intensity of land use: As detailed above, the scenic easement restricts certain uses of the easement area. Those restrictions, coupled with the removal of cattle from the river banks, floodplains, creek beds, meadows, and forests of the federal easement lands will likely result in an improvement in the diversity, abundance, and resilience of the natural communities which reside there. In providing backcountry recreational opportunities in the easement area, MDNR has committed to ensuring those opportunities are consistent with the federal easement.
- 4) Development of motorized access: The scenic easement encumbering these properties forbids the construction of boat ramps, roads and buildings within the easement area.

Additionally, the resource management practices that accompany state ownership will enhance the natural resources across the entire property, complement the existing protections provided by the scenic easement, and protect the characteristics of the Eleven Point River that led to its national designation.

Comment 11: Commenters stated that the Trustees should have held a public meeting in Oregon County on the proposed property acquisitions there.

Response: Following the process established in the SEMORRP, the Trustees engaged the public on the proposed restoration projects. While the Trustees did not hold a public meeting in every county where they proposed to implement a restoration project, they received

comments from members of the public living throughout the entire SEMORRP restoration area and beyond. Specifically, the Trustees received several comments and a signed petition from citizens of Oregon County. Additionally, MDNR staff have met with local officials to discuss the projects and listen to their concerns.

Comment 12: Commenters questioned whether the acquisition of property in Oregon County will harm the county's finances through the loss of tax revenues.

Response: While state property is not subject to local property taxes, MDNR provides payment in lieu of taxes for a period of five years following the acquisition of land consistent with Mo. Const. Art. IV § 47(a). Additionally, state parks produce positive economic benefits in local economies in excess of the loss of property tax revenue (for the Frederick Creek Ranch, property taxes total approximately \$2,000 a year). Results of an economic impact study released in 2012 estimated that total annual expenditures of state park visitors in 2011 were approximately \$778 million. The overall economic impact of visitors' expenditures is estimated at \$1.02 billion in sales, \$307 million in payroll and related income, and \$123 million in federal, state and local taxes. Also, visitors' expenditures support 14,535 jobs. For every dollar spent by MDNR to operate the state park system, Missouri's economy saw a \$26 return on investment (Witter, 2012). These impacts show that Missouri state parks enhance the state's economy as well as improve visitor's health and well-being.

Comment 13: A commenter questioned the thoroughness of the evaluation of the secondary/indirect impacts of the proposed acquisitions in Oregon County. Specifically, the commenter noted several activities as having potential and reasonably foreseeable negative impacts on the Eleven Point National Scenic River:

- Creation of pathways by park users throughout the easement lands;
- The State's intention to construct designated trails into and through the easement lands:
- Changes in the type and intensity of use within the scenic easement lands;
- Loss of the primitive river experience floaters have enjoyed for decades along the Lower Eleven Point River; and
- Development of motorized access as well as other park development brought about by pressure from local government and local commercial interests.

Response: The Trustees considered secondary, indirect impacts in Section IV of the "DRAFT Natural Resource Restoration in the Southeast Missouri Lead Mining District: Proposal for Property Acquisitions and Supplemental Environmental Assessment." While the Trustees' cumulative impacts analysis correctly evaluates potential indirect effects of the proposed projects, the Trustees appreciate the commenter's interest in specific secondary or

indirect, adverse impacts to the environment. Accordingly, the Trustees have included analysis of the impacts identified by the commenter in Section IV.

Comment 14: A commenter noted the presence of children with elevated blood lead levels in St. François County.

Response: The physiological effects of lead exposure to young children are a serious public health concern. If a child is suspected of having an elevated blood lead level, appropriate medical personnel or local public health officials should immediately be contacted. Cleanup of contamination to protect public health and safety is the predominant focus of the EPA actions that are being implemented.

Comment 15: A commenter identified the St. Joseph Lead Company as the source of the recovered natural resource damages.

Response: The selected and approved restoration projects will be funded using natural resource damages recovered in the ASARCO and Freeport McMoRan settlements. The Trustees have not recovered any natural resource damages from the St. Joseph Lead Company.

Comment 16: A commenter questioned why MDNR is acquiring lands rather than funding the capital improvement needs of the state parks system.

Response: Restoration funds must be used to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and cannot be used to fund the capital improvement needs of state parks.

Comment 17: A commenter requested justification for how the acquisition of property in Oregon County would compensate the public for natural resource injuries associated with ASARCO's operations in southeast Missouri.

Response: The acquisition of property in Oregon County, once restored, will serve to replace important habitat types that support migratory birds and other species. As mentioned in response to **Comment 1**, the Trustees identified injuries to a number of natural resources resulting from releases of lead and zinc from mining activities, including migratory birds. The size of the available parcels and their proximity to one another and to other large forested areas (such as the Irish Wilderness to the north) will provide the setting for a number of natural resources to flourish. Ecological studies have consistently shown that large, intact blocks of habitat linked to other blocks through corridors provide the greatest benefit to a diverse set of species—including migratory birds.

Comment 18: A commenter wrote in support of the project proposed in Iron County.

Response: The Trustees appreciate the comment of support for the projects that will be implemented in Iron County. Both the proposed property acquisitions and the Native Plant Diversity Restoration project will compensate the public for the injuries to natural resources resulting from the releases of lead, zinc, and other hazardous substances.

Comment 19: A commenter suggested a number of ways that the Forest Service could strengthen its project proposal for the West Fork Bottomland Restoration project. The commenter also specifically asked how the Forest Service will determine whether tree planting is successful. Additionally, the commenter asked about the planned amount of involvement by The Nature Conservancy in its capacity as a project partner.

Response: The Trustees appreciate the comment. The information currently on the Trustees' websites is a condensed version of the project proposal. The Trustees have placed the full proposal on their websites at the addresses provided on page 1 of this Appendix. Regarding the metrics to measure the success of tree planting, there is not a definitive quantitative survival rate that would trigger replanting. The U.S. Forest Service performs 1st and 3rd year survival surveys after all planting projects. The general guideline for successful stocking is 300 trees per acre on "bare" ground. A survival rate of greater than 50% would likely be acceptable.

The amount of The Nature Conservancy's involvement as a project partner has not yet been determined.

Comment 20: A commenter suggested a number of ways that the U.S. Forest Service could strengthen its project proposal for the Native Plant Diversity Restoration project.

Response: The Trustees appreciate the comment. The information currently on the Trustees' websites is a condensed version of the project proposal. The Trustees have placed the full proposal on their websites and believe it addresses most of the commenter's suggestions.

Comment 21: One commenter raised numerous comments identical to those the author previously raised on the Trustees' release of the SEMORRP as well as on a prior project.

Response: The Trustees previously responded to comments received on the SEMORRP as well as the Request for Proposals, Natural Resource Damage Restoration Projects for Riparian, Wetland, and Floodplain Habitat within Big and Black River Watersheds. Please

see the MDNR's or U.S. Fish and Wildlife Service's websites for responses to those prior comments.

C. CONTACTS

Mr. Eric Gramlich Assessment and Restoration Manager Missouri Department of Natural Resources, P.O. Box 176 Jefferson City, MO 65102-0176 573-526-3353

Email: eric.gramlich@dnr.mo.gov

or

Mr. John Weber Environmental Contaminants Specialist U.S. Fish and Wildlife Service, 101 Park DeVille Dr. Suite A Columbia, MO 65203 573-234-2132 x177

Email: John_S_Weber@fws.gov

or

Ms. Becky Bryan Remediation Coordinator Mark Twain National Forest 401 Fairgrounds Road Rolla, MO 65401 573-341-7436

Email: blbryan@fs.fed.us

REFERENCES CITED

Blake, J. G., and J. R. Karr. 1984. Species composition of bird communities and the conservation benefit of large versus small forests. Biological Conservation 30:173-187.

Simberloff, D., & L.G. Abele. 1982. Refuge design and island biogeographic theory: effects of fragmentation. The American Naturalist, 120(1): 41–50. Retrieved from http://www.jstor.org/stable/2461084

Witter, D. J. 2012. Missouri State Park Economics and Benefits: An Update Based on 2011 Visitation. Retrieved from https://mostateparks.com/sites/default/files/EcoImpact_2012.pdf